

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 243 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : YES

COMMISSIONER OF INCOME TAX

Versus

ABDULRAHIMKHAN M PATHAN

Appearance:

MR BB NAIK WITH MR MANISH R BHATT for Petitioner
MR DA MEHTA FOR KC PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 27/01/2000

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

The Income Tax Appellate Tribunal, Ahmedabad, Bench C, has referred the following three questions for our opinion, arising out of ITA No.2510, 2511 and 2512/Ahd/1981, for the assessment years of 1976-77, 1977-78 and 1978-79.

At the instance of the assessee:

"1. Whether, the assessee was under an obligation after introduction of section 2(15A) of the I.T.Act, 1961, to disclose in his Income-tax return the fact of his marriage with his brother's widow inspite of the legal position regarding relationship between the assessee and the minor sons of the widow by her former marriage?"

At the instance of the Revenue:

"2. Whether, the minors were not the step children of the assessee?"

"3. Whether, the share income of the minors could not be included u/s.64 in the income of the assessee?"

The conspectus, and short spectrum of facts leading to the rise of this reference, may be articulated, at the outset, with a view to appreciate the merits of the reference and the challenge against it.

New Bharat Hing Supply Company was a partnership firm running, at Nadiad. Initially, there were two partners, who were real brothers. The names of the two partners, who were brothers were (1) Abdul Rahim Khan and (2) Abdul Karim Khan, and they were having equal share in the profit of the partnership firm. Karim, one of the two partners, expired on 12.11.66 and in his place, his widow, Ayshabegam was taken as partner and his two minor sons were admitted to the benefits of the partnership.

Ayshabegam, widow of Karim, remarried with Rahim, who was the real brother of her former husband. She remarried with him on 22.2.70. Smt. Ayshabegam, thereafter, retired from the partnership in the period relevant to the assessment year 1972-73, and the firm was reconstituted and the two minors were, again, admitted to the benefits of partnership. The names of the minors are Firoz and Navroz.

As per the case of the Revenue, from the date of remarriage between Ayshabegam and Rahim, the two minor children became the step children of the assessee Rahim, as a result of which, the Income Tax Officer concerned for the assessment year, 1972-73 added the income of minors derived from the partnership firm to the income of the assessee relying on the provisions of section 64(1)(iii) of the Income Tax Act, 1961, as it then stood, read with section 2(15A) of the Act. The Income Tax Officer, invoking the powers of section 147 of the Act made the assessment order, as at the time of first assessment of the income tax return of the assessee, the factum of marriage of Rahim with Ayeshabegam has not been disclosed to the department. It was, therefore, also the contention of the Department that upon a marriage with Ayshabegam, being the widow of brother Karim and whose minors were admitted to the partnership firm, was required and duty bound to disclose this factum to the Income Tax Authorities. The assessee Rahim is a Sunni Muslim, one of the sects of Islam religion.

Thus, the ITO concerned clubbed the share income of those minors from the partnership firm in which the assessee was also a partner to his income upon reassessment.

The Assistant Appellate Commissioner in the appeal held that the reopening was justified and valid, but the income of the minors could not be included in the total income of the assessee, because the minors became step children of the assessee after they were admitted to the benefits of partnership and, according to him, it was necessary that the relationship of father and minor children should be in existence when the children were admitted to the benefits of partnership.

Being dissatisfied, the Revenue went into further appeal before the Tribunal, whereas, the assessee filed cross objections. On the Revenue's appeal and the assessee's cross objections, the Tribunal recorded two separate orders. In so far as the cross objections are concerned, the Tribunal held that the reassessment upon reopening under section 147 of the IT Act by the ITO for the assessment years 1972-73 to 1974-76 was not legal and valid as the definition of "child" which came to be introduced in IT Act by way of section 2(15A) only with effect from 1st April 1976 and, therefore, reopening or reassessment for the assessment year 1976-77 and onwards was legal and valid in view of the amended definition of the expression "child" which included step child. The Tribunal also held that the assessee's case did not come in any way within the purpose of section 64 and the minor

sons were not the step children of the assessee. It was, therefore, the view of the Tribunal in appeal, at the instance of the Revenue, that the minors share income from the partnership firm could not be included in the income of the assessee on the basis of the provisions of section 64(1)(iii) of the IT Act, as it then stood.

The Tribunal was approached by the assessee as well as by the Revenue for reference on number of questions which were proposed. However, finally, the Tribunal recording its reasons has made reference to this Court the aforesaid three questions only.

Learned advocate for the assessee Mr Mehta has, in his marathon, submissions made before us placed reliance on host of the pronouncements and also on the views and the opinions on the personal law.

The first contention propounded by Mr Mehta for the assessee is that the provisions of the Personal Law in case of a Mohammedan and marriage or remarriage which is a contractual matter would not, ipso facto, create relationship between the children of former husband and the second husband in case of remarriage by the widow. Therefore, under the Personal Law, the assessee Rahim was not bound to maintain nor minors are entitled to claim inheritance as there was no any relationship much less relationship of father and step children, which is alien to the personal law.

Secondly, it was submitted that the assessee was not at all under any obligation to disclose the factum of remarriage of widow with him, whose children were admitted to the benefits of the partnership.

Thirdly, it was contended that there was no fit and appropriate case for reopening or making a reassessment exercising powers of the provisions of section 147A read with section 148 of the IT Act 1961 and, therefore, the Tribunal ought to have held that even after amendment in the definition of "child" which came into force with effect from 1st April 1976, would not influence or affect the rights of the minor or the obligation of the assessee. Therefore, the Tribunal ought not to have clubbed the share of income of the partnership firm of the minors in which assessee was also a partner at the relevant time with his income, was not legal and valid.

As against that, the learned counsel for the Central Government appearing for the Revenue has, seriously,

countered the aforesaid contentions and has further submitted that when the provisions of central law is clear, there would not arise any question of introducing or following the principles of personal law. He has also drawn our attention to the definition of the expression "child" which came to be introduced in 1976 by virtue of which "child" is inclusive of "step child". He has, of course, also, placed reliance on case law to which reference will be made by us, as and when required hereinafter. It was, also, submitted by him that reassessment in view of the provisions of section 147 and 148 of the IT Act was justified and in the facts of the present case, the clubbing of share income of the minors with the assessee in view of the provisions of section 64 was, rightly, done.

Section 64, clearly, provides that the income of an individual assessee will also include the income of the spouse, minor child, etc. depending upon the factual scenario in terms of the scheme of section 64. The relevant portion of section 64, as it then stood, read as under :

"64.(1) In computing the total income of any individual, there shall be inclusion of all such income as arises directly or indirectly --

(i) xxxx

(ii) xxxx

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm."

It could, very well, be visualised from the aforesaid provision that in a case of minor child, who is admitted to the benefits of the partnership in a firm in which the assessee, at the relevant time, was also a partner, then in that case, the share income of the minor could be clubbed with the income of the assessee.

At this stage, it would also be expedient and material to have a look at the definition of child. In section 2(15A) which came to be inserted by Taxation Laws (Amendment) Act, 1975, with effect from 1.4.1976, the expression child is defined. It reads as under:

"(15A) 'child', in relation to an individual, includes a step-child and an adopted child of that individual."

It is, clearly, evident from the plain perusal of the aforesaid section that step child is also included in the definition of child. The doubt which hitherto used to be whether the expression "child" could be included step child or not has been statutorily dispelled and clarified. It, therefore, becomes clear that the share income of a step child could be clubbed with the income of the assessee who is a partner in the firm in which the minor or a step child is admitted to the benefit of the firm.

No doubt, the expression, 'step child' incorporated in section 2(15A) of the IT Act is not, statutorily, defined and, therefore, obviously, according to the settled proposition of law on this score, reliance has to be placed upon the dictionary meaning of the expression. There is no dispute about the fact that the dictionary meaning of the expression, step child is that a child of a spouse born out of the wedlock with the former's spouse. In other words, a child of one's husband or wife by a previous marriage.

On a conjoint reading of the provisions of section 2(15A) and section 64, as it then stood, it becomes quite clear that an income of a step child as per the dictionary meaning of a child of the spouse out of a previous marriage, if happen to have been admitted to the benefits of the partnership firm in which the parent was also a partner, at the relevant time, the share income of the minor or a child including the step child can be clubbed with the income of the assessee. Of course, subsequently, amendment came to be made even dispensing with the requirement of assessee being a partner in the same firm, to which, we are not concerned, at this stage. So is the position in respect of the change of provisions of section 2(15A) to section 2(16B), which is also not material for our purpose in the present case.

There are several material tenets and principles for interpretation of the statutes. One of the cardinal principles of interpretation of statutes is to assign the true, literal dictionary meaning in absence of, it being susceptible to, any other meaning. In our opinion, the expression "step child" in absence of any statutory definition and in view of the clear dictionary meaning, is quite clear and minors, Firoz and Navroz, who were the sons of Ayeshabegam with whom Rahim entered into a matrimony, obviously, therefore, became step children of the assessee. There cannot be any other status which could be ascribed to the minors qua the assessee. There would not arise even any question of examining the

principles of provisions of personal law of the assessee in fiscal liability for the assessment under IT Act. When the meaning is clear in a Central statute, it cannot be contended that the expression "step child" being alien to personal law of a party must be given a precedence over the clear provisions in the central tax statute. In our clear opinion, the status of minors, the natural sons of Ayeshabegam who came to be admitted to the benefit of the partnership firm in which the assessee was a partner upon remarriage with Ayeshabegam after the death of her former husband Karim, the status of the assessee, obviously, therefore would be of step father and the position and the status of the minors in that case would be of step children. Obviously, therefore, the provisions of section 64(1)(iii) as it then stood, would stand attracted.

Since the definition of child included step child with effect from 1.4.76, the Tribunal is justified in holding that income of the minors who was the step children of the assessee from the assessment year 1976-77 in so far as clubbing with the income of the assessee is concerned is justified. Therefore, the first contention raised on behalf of the assessee is quite meritless.

In so far as, the second submission raised by the learned advocate for the assessee is concerned, in view of our earlier observations and the clear provisions of section 2(15A) read with section 64 of the IT Act, it becomes obligatory for an assessee to disclose the factum of remarriage of widow with him, whose children were admitted to the benefits of the partnership firm in which the assessee was a partner. In view of the provisions of Rule 12 of the Income Tax Rules, 1962 read with section 139 of the IT Act, 1961, which prescribes a return for the assessment, wherein, an assessee is obliged to indicate the income of the minor or child including a step child. The mere fact that some minors were admitted to the benefits of the partnership firm during the life time of the natural father Karim, it cannot be contended that the relationship of the assessee with the minors was only that of an uncle and nephew and not step father and step child. Such a submission, of course, would be, prima facie, alluring, but not attractive, subtle but not sound. We have not been able to appreciate as to from which source the authority below has concluded that the relationship of the assessee with the minors is that of uncle and nephew even during the relevant assessment years 1976-77 and 1977-78. Nothing has been, successfully, pointed out from the record which would, even, remotely, satisfy us to approve and confirm such a

finding reached by the authority and strongly, relied upon by the assessee.

It also cannot be allowed to contend that once the relationship of a particular character is created and stated in the income tax return for the purpose of assessment, it shall continue to exist unless otherwise established by the Department. Apart from that, the following facts and aspects have remained unequivocal and unquestionable, which would clearly go counter to the submissions raised on behalf of the assessee in this behalf.

- (1) That the partnership firm run and known in the name of "New Bharat Hing Supply Co.", initially had two partners who were real brothers, namely, Abdul Rahim Khan and Abdul Karim Khan, sharing equally in the profits.
- (2) Karim, one of the partners, expired on 12.11.66 and his place was taken by his widow Ayeshabegam and his two minor sons.
- (3) Smt. Ayeshabegam was taken as a partner in the said firm, whereas two minors were admitted only to the benefits of the partnership firm.
- (4) Original partner and brother Karim expired and thereafter there was reconstitution of the partnership firm. Again, during the assessment year 1972-73, Smt. Ayeshabegam also retired from the partnership and the firm again came to be reconstituted and the two minors were again admitted to the benefits of the partnership.
- (5) The assessee Rahim married with his brother's widow Ayeshabegam on 22.2.70.
- (6) The definition of child came to be amended by Taxation Laws (Amendment) Act, 1975 with effect from 1.4.76, whereby, "child" in relation to individual included a step child and also an adopted child of that individual.

In view of the aforesaid admitted aspects emerging from the record of the case leave no any manner of doubt in our mind that the assessee was obliged to disclose in his income tax return the factum of his marriage with his brother's widow in spite of the legal position regarding relationship between the assessee and the minor sons of the widow by her former marriage as minors became step

children of the assessee.

Obviously, therefore, the Assessing Officer, was justified in reopening the assessment of the Income tax return under section 147(a) read with section 148 having come to know the factum of such a relationship between the assessee and the minors who were step children and who were admitted to the benefits of the partnership. It is true that even after amendment in the provisions of section 147, the Assessing Officer has to form an opinion and mere change of opinion, ipso facto, would not be sufficient to permit him to reopen the assessment of the return. So is not the factual situation in the case on hand before us. It cannot be even contended for a moment that there was a change of opinion in so far as the assessment of income tax return was concerned. Pursuant to the provisions of section 147 read with section 148 of the IT Act, 1961, it is obvious that if the Assessing Officer who has a reason to believe that any income chargeable to tax has escaped the assessment for any assessment year, as in the present case, on account of the non-disclosure of the factum of marriage with Ayeshabegam, whose natural children were admitted to the benefit of the partnership, it is the statutory duty of the Assessing Officer to reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to the notice subsequently, in the course of proceedings under section 147. There is no any dispute about the fact that the proviso to section 147 is not attracted to the facts of the present case as the reassessment of the income tax return of the assessee was within the period of four years after the assessment under section 143(3) of the IT Act was made.

We have gone through the reasons recorded by the Assessing Officer for the initiation of the proceedings for reassessment, and, in our opinion, there is full justification in reassessment of the income tax return by the Assessing Officer for the assessment year 1976-77, 1977-78 and 1978-79.

That, now, take us to appreciate the examination of the case law relied on by the learned advocate for the assessee. They are as follows:

- (1) In Calcutta Discount Co. Ltd v. Income Tax Officer, (1961) 41 ITR 191.
- (2) In Tulsidas Kilachand & ors. v. Commissioner of Income Tax, (1961) 42 ITR 1.

- (3) In *Balaji v. Income Tax Officer*, (1961) 43 ITR 393.
- (4) In *Philip John Plasket Thomas v. C.I.T.*, (1963) 49 ITR 97.
- (5) In *V.D.M.R.M. M. R.M. Muthiah Chettiar v. Commissioner of Income Tax*, (1969) 74 ITR 183.
- (6) In *Commissioner of Income Tax v. Prem Bhai Parekh*, (1970) 77 ITR 27.
- (7) In *C.I.T. v. P.K.Kochammu Amma*, (1980) 125 ITR 624.
- (8) In *C.I.T. v. J.K. Hosierey Factory*, (1986) 159 ITR 85.

We have, extensively, examined and, threadbare, considered the propositions and the ratio propounded in the aforesaid decisions. Firstly, the entire case law will not be applicable to the facts of the present case, for the simple reason that for interpretation of the plain and unambiguous meaning of a Central tax statute, the principles and the provisions of personal law are not required to be considered. Secondly, the proposition of law which we highlight is, significantly, reinforced by a latest decision of the Hon'ble Apex Court in *Syed Sidique v. C.I.T.*, (1998) 9 SCC 393. Obviously, therefore, meticulous articulation of the entire case law would, now, not be warranted.

Section 64 of the IT Act 1961 has a purpose, policy and philosophy behind it. The dominant design and decideratum and prominent purpose and policy behind incorporating the provisions of section 64 is to see that there is no tax evasion and to check manipulation, malpractice or misadjustments of taxable income. It is in this context, the provisions of section 64 has to be considered in a way so that it can achieve and subserve its objects and not to frustrate it. After having amended the definitional clause of expression "child", including a step child, it leaves no any manner of doubt that in a case like the one on hand, the natural, literal and dictionary meaning has to be adopted in absence of any statutory definition of step child and not the principles or the policy of the personal law of a party or an assessee, for that purpose.

In the light of the aforesaid discussions and the factual scenario and the relevant proposition of law, we answer question No.1, (at the instance of the assessee) in the affirmative, against the assessee and in favour of the Revenue, whereas, question No.2, at the instance of the Revenue, in the negative against the assessee and in favour of the Revenue and question No.3, at the instance of Revenue, in the negative in favour of the Revenue and against the assessee. The reference shall, accordingly, stand disposed of without any order as to costs.

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